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**Agenda Item: 4**  
**Meeting Date: June 15, 2006**

## **CALIFORNIA BAY-DELTA AUTHORITY**

### **CONSIDERATION OF A RESOLUTION AUTHORIZING AN INTERAGENCY AGREEMENT BETWEEN CALIFORNIA BAY-DELTA AUTHORITY AND DEPARTMENT OF JUSTICE FOR LEGAL SERVICES**

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**Summary:** This item requests the California Bay-Delta Authority (Authority) to consider and approve the Scope of Work and Budget for a new Interagency Agreement between the Authority and the Department of Justice. Under this Agreement, the Department of Justice will continue to provide representation in CALFED litigation and day-to-day legal services for the Authority. An “assignment” provision will be included in the Agreement in contemplation of future assignment to The Resources Agency as part of the reorganization plan contained in the 2006-07 Budget Act.

**Recommended Action:** The Authority adopt the attached Resolution 06-06-01 authorizing the Director, or his designee, to enter into an Interagency Agreement with the Department of Justice for legal services.

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The Department of Justice has provided legal representation to the interagency, cooperative effort called the CALFED Bay Delta Program since 1995, when State/Federal efforts to prepare the Bay-Delta plan commenced. The Department of Justice has provided day-to-day legal advice on all aspects of the CALFED planning process and on implementation of the CALFED Program. In addition, the Department of Justice has represented The Resources Agency and other CALFED agencies in State and Federal litigation challenging the CALFED Program and its Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

By Resolution 03-08-11, the California Bay-Delta Authority retained the services of the Department of Justice for a three-year term from July 1, 2003 through June 30, 2006. The Department of Justice is playing an ongoing role in the litigation challenging the CALFED Programmatic EIS/EIR, which is expected to continue during Fiscal Year 2006/2007 in both the California Supreme Court and in the Federal court system. The Department of Justice also continues to provide legal advice in coordination with the Authority’s Chief Counsel on a wide range of issues.

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**List of Attachments**

Resolution 06-06-01

**Contact**

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California Bay-Delta Authority

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## **CALIFORNIA BAY-DELTA AUTHORITY**

### **RESOLUTION 06-06-01**

#### **AUTHORIZING AN INTERAGENCY AGREEMENT BETWEEN THE CALIFORNIA BAY-DELTA AUTHORITY AND DEPARTMENT OF JUSTICE FOR LEGAL SERVICES**

**WHEREAS**, the California Department of Justice provided legal representation to the interagency cooperative effort called the CALFED Bay-Delta Program between 1995 and 2003; and

**WHEREAS**, the California Department of Justice has provided legal representation to the California Bay-Delta Authority since 2003 pursuant to an Interagency Agreement approved in Resolution No. 03-08-11; and

**WHEREAS**, the California Department of Justice is representing The Resources Agency and other CALFED agencies in State and Federal litigation challenging the CALFED Bay-Delta Program and its Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR); and

**WHEREAS**, the California Department of Justice has also provided legal advice related to the California Bay-Delta Authority's oversight and coordination efforts, implementation of the Science Program element, and other matters related to implementation of the CALFED Bay-Delta Program; and

**WHEREAS**, the Authority and the CALFED Program will need continuing legal representation in litigation and in day-to-day legal matters in coordination with its Chief Counsel;

**NOW, THEREFORE, BE IT RESOLVED** that the Authority hereby authorizes the Director, or his designee, to sign an Interagency Agreement with the California Department of Justice for legal services, as generally described in the Scope of Work (Attachment 1), for a three-year period commencing July 1, 2006 and terminating June 30, 2009, for a total not to exceed \$1,319,400 per year, subject to appropriation of adequate funds.

**CERTIFICATION**

The undersigned Assistant to the California Bay-Delta Authority does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Bay-Delta Authority held on June 15, 2006.

**Dated:**\_\_\_\_\_

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**Julie E. Alvis**  
**Assistant to the California Bay-Delta Authority**

## **SCOPE OF WORK**

### **A. Introduction**

The Department of Justice (DOJ) will provide legal services to the California Bay Delta Authority (CBDA). Services of the DOJ shall be available at the request of the CBDA Director, or its Chief Counsel.

### **B. Background**

DOJ has been providing legal services to CBDA and its predecessors, the CALFED Bay-Delta Program and the Bay-Delta Oversight Council, since 1995. As the CBDA continues to implement and oversee the 30-year California Bay-Delta Program and defend legal challenges, the need for DOJ services continue.

### **C. Scope**

DOJ will provide the following legal services for the CBDA in coordination with its Chief Counsel:

- Representation of the State Respondents in ongoing state and federal litigation challenging the CALFED Programmatic Record of Decision (ROD) and Programmatic Final EIS/EIR; represent the CBDA in any new litigation naming it as a party; and possibly act as amicus counsel in litigation in which the Authority has an interest. Coordinate with counsel for state agencies that are implementing the CALFED Bay-Delta program.
- Legal advice related to new and/or refocused efforts described in the 10-Year Action Plan for the CALFED Bay-Delta Program, including, but not limited to legal issues related to: changes in the CALFED governance structure; changes in CALFED public advisory committee structure; the long-term Delta Vision planning process, end-of-Stage-1 decisions; and revised regulatory frameworks for compliance with state and federal endangered species laws.
- Legal advice, document review, and document drafting related to compliance with open meeting acts, public records acts, conflict of interest laws, ex parte communications, delegations of authority and contracting laws.
- Legal advice related to implementation of programs mandated by the CBDA Act. Advice on issues related to the science program, oversight and integration of the CALFED Program elements, and pre-litigation counseling. Issues include, but are not limited to, review of environmental documents, compliance with state contract and grant laws and procedures, incorporation of agency commitments in the CALFED Programmatic Record of Decision into agency actions.

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- Legal advice related to interpretation of the CBDA legislation. Review and analyze legislative bills and assist in drafting legislation to assure legal sufficiency in furthering the CBDA's policy objectives.
- Paralegal to provide litigation research and document preparation support to attorneys; provide client advice support to attorneys and client including attending meetings, conducting research, and drafting documents.
- At the request of the Chief Counsel, attendance at meetings of the CBDA, the Bay Delta Public Advisory Committee (BDPAC), and other meetings as appropriate.

**D. Place of Performance**

The tasks identified in this contract will be primarily performed in Sacramento.

**E. Communication**

The Program Manager for CBDA is Chris Stevens, who may be reached at 650 Capitol Mall, 5<sup>th</sup> Floor, Sacramento, California, 95814, telephone number (916) 445-5511. Upon advanced written notice to DOJ, the contract manager may be changed at any time.

DOJ Project Managers are Danae Aitchison, who may be reached at 1300 I Street, Sacramento, California, 95814, (916) 322-5522 and Virginia Cahill, who may be reached at 1300 I Street, Sacramento, California, 95814, (916) 322-5647. Upon advance written notice to CBDA, the Project Manager may be changed at any time.

**Exhibit B**  
**Budget Detail and Payment Provisions**

**1. Invoicing**

- A. For services satisfactorily rendered and upon receipt and approval of the invoices, the California Bay-Delta Authority (CBDA) agrees to compensate the Department of Justice (DOJ) for actual expenditures incurred in accordance with the rates specified herein.
- B. The cost of out-of-state travel and other costs associated with litigation will be reimbursed to Department of Justice (DOJ) by CBDA. The costs of experts and other outside consultants will be paid directly to each such experts and/or consultants by CBDA via three-party contracts to be prepared and administered by the DOJ. Contracts for such experts and outside consultants are subject to prior approval by the CBDA.
- C. Invoices shall include the Agreement Number and CBDA agrees to compensate DOJ monthly, in arrears, through the Direct Transfer process, per Government Code 11044, computed in accordance with Section 8752 and 8752.1 of the State Administrative Manual. Invoices shall be submitted to:

Edgar Openiano, Accounting Chief  
California Bay-Delta Authority (CBDA)  
650 Capitol Mall, 5<sup>th</sup> Floor  
Sacramento, CA 95814

**2. Budget Contingency Clause**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for this contract, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount. For services satisfactorily rendered, CBDA agrees to compensate DOJ for actual expenditures incurred monthly in arrears through the Direct Transfer process, per Government Code 11044. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Part 1, Division 3, Title 2 of the Government Code of the State of California.

### **3. Payment**

- A. Costs for this Agreement shall be computed in accordance with State Administrative Manual (SAM) Sections 8752 and 8752.1.
- B. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Division 3, Title 2 of the Government Code of the State of California.

### **4. Budget Estimate**

5 PYS (4 Attorneys; 1 Paralegal) up to 9,000 hours/year, up to \$1, 319,400 per year.



**Exhibit D**  
**Special Terms and Conditions**  
**(Interagency Agreements)**

**1. Dispute Resolution**

Any claim that the providing State agency may have regarding the performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the California Bay-Delta Authority (CBDA) Contract Manager in writing within thirty days of its accrual. The providing State agency and the California Bay-Delta Authority Director or Director's designee shall then attempt to negotiate a resolution of the claim, and process an amendment to this Agreement to implement the terms of any such resolution. If the providing state agency and the California Bay-Delta Authority are unable to resolve the dispute, the decision of the Director or Director's designee shall be final.

**2. Severability**

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.

**3. Standard of Professionalism**

The providing State agency shall conduct all work consistent with the professional standards of the industry and type of work being performed under the Agreement.

**4. Termination Without Cause**

Either party may terminate this Agreement without cause upon 30 days advance notice. The providing State agency shall be reimbursed for all reasonable expenses incurred up to the date of termination.

**5. Assignment**

The providing State agency hereby consents to assignment of this contract from the California Bay-Delta Authority to the California Resources Agency and to assumption of all rights and duties under the contract by the California Resources Agency, at any time determined to be appropriate by the California Bay-Delta Authority and the California Resource Agency. The providing State agency agrees to execute promptly any documents necessary to accomplish such assignment and assumption as directed by the California Bay-Delta Authority and/or the California Resources Agency. The California Bay-Delta Authority or the California Resources Agency shall provide the providing State agency with a copy of the assignment and the name, address, and telephone number of the new program manager for the contract.